

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
V.)	CR. No.: 1:06cr107-MHT
)	
MICHAEL D. HARVEY)	

UNOPPOSED MOTION TO CONTINUE TRIAL

COMES NOW the Defendant, Michael D. Harvey, by and through undersigned counsel, Kevin L. Butler, and moves this Court, pursuant to 18 U.S.C. §§ 3161(h)(1)(A), 3161(h)(1)(I), 3161(h)(8)(B)(I), 3161(h)(8)(B)(ii) and 3161(h)(8)(B)(iv) for a continuance of his trial setting of February 5, 2007 to June 4, 2007. In support of this motion, Defendant would show the following:

1. Mr. Harvey is charged in a three-count Indictment with sexual misconduct with his nephew who at the time of the alleged offense was a person who had not attained the age of 12.
2. Mr. Harvey was 18 at the time of the offense. Juvenile education records indicate he has a possible Intelligence Quotient (IQ) of 57 and an extensive history of psychiatric treatment. He also has a past history of being abused, both physically and sexually, by men and women.
3. Prior to his arrest on these charges, Mr. Harvey resided in Seminary, Mississippi, with his mother. As a result, much of the necessary case investigation has been conducted outside of this district, and locating necessary witnesses has been difficult as several witnesses have transient lifestyles. Additionally, all material and relevant records related to Mr. Harvey's mental health are located out of this district.
4. Based upon Mr. Harvey's mental health limitations, undersigned counsel moved to suppress verbal statements made by Mr. Harvey at the time of his arrest. (Docket #22). On December

27, 2006, this motion has been denied. (Docket #53).

5. Given the facts alleged and the case's procedural posture, it has been determined this case should not proceed to trial and Mr. Harvey, through counsel, has negotiated in good faith with the government in an attempt to reach a resolution.
6. However, based upon the charged offenses, even with his minor criminal history, Mr. Harvey may be facing, substantial term of imprisonment.¹
7. Undersigned counsel and government counsel are working with the United States Probation Office in an attempt to clarify the potential sentence Mr. Harvey is facing. These severe and multiple sentencing options make this case unusual and complex.
8. The parties are presently attempting to formulate an appropriate resolution that is in conformity with the charged statutes, the sentencing guidelines and applicable case law. A joint plea agreement in conformity with controlling legal authority will assist the Court in exercising its sentencing authority and imposing a reasonable sentence under 18 U.S.C. § 3553.
9. However, because a proposed plea agreement can not be completed on or before the presently scheduled trial date, it is in the interest of justice to allow both parties additional time to finalize the plea agreement.
10. If trial is continued and the parties resolve this matter prior to the new trial date, it will be scheduled immediately for a change of plea so as to expedite resolution and sentencing.
11. Requests for a continuance are addressed to the sound discretion of the trial court, *United*

¹ From a very early age, Mr. Harvey has a history of engaging in sexually inappropriate conduct in Mississippi and other states. However, it does not appear he has a previous conviction for such conduct. If he does have a prior conviction for sexual abuse of a minor, Mr. Harvey may be facing a mandatory sentence of life in prison. *See* 18 U.S.C. § 2241(c).

States v. Darby, 744 F.2d 1508, 1521 (11th Cir. 1984), *reh'g denied* 749 F.2d 733, *cert. denied*, 471 U.S. 1100 (1985). Additionally, pursuant to 18 U.S.C. §§ 3161(h)(1)(I), 3161(h)(8)(B)(I), 3161(h)(8)(B)(ii) and 3161(h)(8)(B)(iv), if it is in the interest of justice, this court has authority to continue trial to allow the parties time to resolve complex issues necessary for a fair and complete plea agreement to be submitted for the court's consideration.

12. Counsel for the government, Verne Speirs, Esq., does not oppose this motion.

FOR THE REASONS, Mr. Speirs respectfully requests that this Motion be granted and the trial in this matter be continued from the February 5, 2007 trial docket until the June 4, 2007 trial term.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Verne Speirs, Esquire
Assistant United States Attorney
One Court Square, Suite 201
Montgomery, Alabama 36104

Respectfully submitted,

s/ Kevin L. Butler
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